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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,649	12/28/1999	AMY MULDERRY	07019.0004	1261

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EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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2167

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DATE MAILED: 01/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/473,649

Applicant(s)

Mulderry et al.

Examiner

O'Connor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on January 9, 2002 (Election)
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above, claim(s) 10-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Invention I (Claims 1-9) in Paper N^o 6 is hereby acknowledged. The traversal is on the ground(s) that "the allegation that the inventions are unrelated has not been properly supported," and that the "claims are all designated as the same search class," thus, are closely related, such that the Office could examine all of the inventions in a single application without incurring "serious burden."
2. Applicant's arguments have been fully considered but they are not persuasive.
3. The argument that "the allegation that the inventions are unrelated has not been properly supported" has been disregarded as merely spurious, as the Office action making the requirement for restriction makes no such allegation. In fact, the Office action explicitly states that the inventions "are related," the complete and exact opposite of the allegation made by applicant.
4. Regarding the argument that the "claims are all designated as the same search class," thus, are closely related, such that the Office could examine all of the inventions in a single application without incurring "serious burden," applicant is advised that a "classification" by the Office is comprised of two parts: a "class" and a "subclass." When an invention is classified in a

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particular class and a particular subclass, and a second invention is classified in the same class but a different subclass, then their classifications are different (i.e. not the same). The fact that the first part of the classification, the "class," is the same, is completely irrelevant. Applicant's argument is akin to arguing that applicant has the same phone number as everybody else in Washington, DC, just because everybody else in Washington, DC has the same area code as applicant. In addition, as examining multiple inventions in a single application would, obviously, indeed impose a serious burden on an examiner, the argument has been deemed not persuasive.

5. The restriction requirement is still deemed proper and is therefore made FINAL.
6. Claims 10-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in Paper N^o 6.

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Oath/Declaration

7. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 601.01(a); and,
- It does not identify the post office address of each inventor. A post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1-9 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Walker et al.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to the disclosure.

11. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525.

GJOC

January 25, 2002


ROBERT P. OLSZEWSKI
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